

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4929-01
Bill No.: SB 904
Subject: Tobacco Products; Health, Public; Department of Health and Senior Services
Type: Original
Date: February 22, 2010

Bill Summary: This legislation repeals the Clean Indoor Air Act and enacts new provisions relating to the prohibition of smoking in public places.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(Unknown but Greater than \$1,629,733)	(Unknown but Greater than \$1,426,067)	(Unknown but Greater than \$1,468,850)
Total Estimated Net Effect on General Revenue Fund	(Unknown but Greater than \$1,629,733)	(Unknown but Greater than \$1,426,067)	(Unknown but Greater than \$1,468,850)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	17 FTE	17 FTE	17 FTE
Total Estimated Net Effect on FTE	17 FTE	17 FTE	17 FTE

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Sections 191.1200 - 191.1230:

Officials from the **Office of the State Courts Administrator, Francis Howell School District, Special School District, Parkway School District** and the **Department of Public Safety-Division of Fire Safety** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Department of Natural Resources (DNR)** states the proposal would repeal the Clean Indoor Air Act and enact new provisions relating to the prohibition of smoking in public places.

The Department of Health and Senior Services regulates indoor air. The DNR would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Elementary and Secondary Education** assume there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Officials from the **Department of Health and Senior Services (DHSS)** assume Section 191.1224 requires the Department to enforce the provisions of the proposal. In order to fulfill these duties, a compliance unit would be established within the Department with the following personnel:

- Health and Senior Services Manager (Band 2, \$45,672)
 - o Provide oversight of the unit and coordinate rulemaking;
- Planner III (A28, step G, \$43,344)
 - o Coordinate and collaborate with other state agencies to implement the education, training, and enforcement of the legislation; respond to media requests for information; and oversee the website development;

ASSUMPTION (continued)

- Health Educator I (A18, step F, \$29,580)
 - o Develop educational materials to distribute to all businesses to promote smoking cessation resources, develop and provide training to businesses, chambers of commerce and community groups; and assist in developing education campaigns aimed at target groups;
- Health Program Representative II (A21, step G, \$33,420)
 - o Operate a complaint line (M-F, 8 hour shift) to record complaints, log caller and complaint information, direct complaints to the appropriate enforcement authority and answer questions; and maintain the program side of the complaint database;
- Environmental Specialist IV (A28, step G, \$43,344)
 - o Serve as the compliance and enforcement officer overseeing the Environmental Specialists I's and the complaint investigation process;
- Two Environmental Specialists I (A18, step F, \$29,580)
 - o Provide follow-up to an estimated 2,000 complaint calls per year (based on Iowa's report of complaints in their first year); analyze complaint information for patterns; work with appropriate authorities to assure enforcement; and fine collection;
- Administrative Office Support Assistant (A15, step F, \$26,784)
 - o Supervise staff that will assist with general office duties including correspondence, mailings and training coordination;
- Accounting Specialist II (A25, step B, \$38,700)
 - o Provide fiscal liaison functions for the compliance budget unit including budget management, contract assistance, fine revenue and fund management, analysis and projections; and
- Computer Information Technologist Specialist II (A33, step B, \$55,548)
 - o Maintain the complaint web site applications and modify current inspection databases to include smoking ban observations conducted during routine inspections in addition to complaints.

Based on the experience of other states which have enacted statewide smoke free legislation, an educational campaign is required to fully notify all Missourians about the provisions of the statute. A small media campaign in the first year has been included in the cost estimate. The campaign will include:

Hughes (Media consultant).....	\$5,000
(To develop strategy, tactics, and recommendations)	
True Media—TV, 30 second ads.....	\$100,000
Learfield—Radio, 30 second ads.....	\$30,000
Mo. Broadcasters —Radio, 30 second ads.....	\$30,000

ASSUMPTION (continued)

Newsprint advertising.....	\$57,000
Magazine Style, Minority.....	\$35,000
Facebook ads.....	\$30,000
Subtotal, ads.....	<u>\$287,000</u>

In addition, a notification brochure would be sent to approximately 175,000 employers, to consist of the following charges:

Mo State Printing Center - resource brochure...	\$12,250
(175,000 copies @ \$0.07); and	
Mo State Printing Center – folding, postage, etc. ...	\$64,750
(175,000 copies @ \$0.37)	
Subtotal, resource brochure.....	\$77,000

The total cost for the educational media and notification campaigns will be approximately \$364,000.

Section 191.1224.2 states, "The department of health and senior services, local fire department, or such departments' designees, shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with sections 191.1200 to 191.1230." A large portion of the approximately 175,000 businesses in Missouri are not currently inspected by DHSS or its designees. The Department assumes that those establishments not inspected by DHSS would be checked for compliance by the agencies that currently perform the inspections.

Section for Child Care Regulation (SCCR): Currently the only licensed facilities in the Section for Child Care Regulation that permit smoking are family homes. As of January 2010, there were approximately 1,500 family home run child care facilities. The SCCR would print and mail a letter notifying each of the 1,500 family homes of the change in the law. Other agencies involved with child care centers, such as fire and sanitation, child care nurse consultants, local health departments, and Missouri Child Care Resource and Referral would also be notified. SCCR estimates 400 additional agencies would be sent a letter.

The SCCR would also print additional sheets to insert into rule books that are already printed. Approximately 1,500 Family Home Rule Books have been printed. The SCCR inspection software is currently being replaced; therefore adding the smoking provision as an additional rule would have minimal impact.

Section for Long Term Care Regulation (SLCR): Most long term care facilities currently allow smoking. As a result the Department will need to increase visits during surveys and as a result of complaints to ensure compliance with the proposed legislation. In addition, if a facility does not comply with the requirements, they could face license revocation which would require residents

ASSUMPTION (continued)

to move from their "home" to another facility. The SLCR assumes the increased visits will require the addition of one Facility Surveyor II (Grade A26, Range G, \$40,212) in each of its seven SLCR regions. Notification letters will also be sent to the approximately 1,250 facilities that it regulates.

The cost of printing and mailing notification letters to SCCR and SLCR facilities is as follows:

- printing costs: \$465 (4,650 notifications x \$0.10 per copy);
- envelope costs: \$275 (\$55 per 1,000 envelopes; an estimated five groups of 1,000 will be needed)
- postage costs: \$1,558 (4,650 x \$0.335)

Section 191.1224.5: Allows the Department or any person aggrieved by the failure of an owner, operator, manager, or other person in control of a public place or place of employment to comply with the provisions of the legislation to apply for a court order to enforce the provisions. The Department is unsure of the fiscal impact of this section. This response does not include the services of an attorney, but depending on the interpretation of this section, significant legal activities may be required; therefore the fiscal impact of this section is unknown.

In response to a similar proposal from this year (HB 1766), officials from the **Office of the Attorney General (AGO)** assume the proposal assigns enforcement of its provisions to DHSS, and allows any aggrieved party to bring an injunctive action. AGO assumes that the proposal would result in an increase in cases referred from DHSS. Therefore costs are unknown. If a significant number of cases result from the proposal over time, AGO would seek an additional appropriation to assist DHSS with upholding enforcement actions.

FISCAL IMPACT - State Government

FY 2011
(10 Mo.)

FY 2012

FY 2013

GENERAL REVENUE FUND

Costs - Department of Health and Senior Services

Personal Service	(\$563,956)	(\$697,049)	(\$717,961)
Fringe Benefits	(\$295,739)	(\$365,532)	(\$376,499)
Equipment and Expense	(\$403,740)	(\$363,486)	(\$374,390)
Program Costs-Section 191.1224.5	(Unknown)	(Unknown)	(Unknown)
Program Costs-Media	(\$287,000)	\$0	\$0
Program Costs-Brochure	(\$77,000)	\$0	\$0
Program Costs-Notification Letter	(\$2,298)	\$0	\$0
<u>Total Costs - DHSS</u>	<u>(Unknown but</u>	<u>(Unknown but</u>	<u>(Unknown but</u>
	<u>Greater than</u>	<u>Greater than</u>	<u>Greater than</u>
	<u>\$1,629,733)</u>	<u>\$1,426,067)</u>	<u>\$1,468,850)</u>
FTE Change - DHSS	17 FTE	17 FTE	17 FTE

**ESTIMATED NET EFFECT ON
GENERAL REVENUE FUND**

<u>(Unknown but</u>	<u>(Unknown but</u>	<u>(Unknown but</u>
<u>Greater than</u>	<u>Greater than</u>	<u>Greater than</u>
<u>\$1,629,733)</u>	<u>\$1,426,067)</u>	<u>\$1,468,850)</u>

Estimated Net FTE Change for General Revenue Fund

17 FTE

17 FTE

17 FTE

FISCAL IMPACT - Local Government

FY 2011
(10 Mo.)

FY 2012

FY 2013

POLITICAL SUBDIVISIONS

<u>Costs - Program Costs</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
POLITICAL SUBDIVISIONS**

<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

Section 191.1227.3 of the proposed legislation could have an economic impact on small businesses as it allows for licenses to be suspended or revoked for violations. In addition, it allows for fines to be levied for each day a violation occurs.

Current child care rules for child care centers and group homes prohibit smoking in child care areas and in food preparations and food service areas. There are no rules prohibiting smoking in family homes. This legislation would ban smoking in all child care facilities. Approximately 1,500 family child care homes could be impacted by this legislation.

Most long-term care facilities currently allow smoking. With this proposed legislation, all of these long-term care facilities would have to designate an outside smoking area at least 15 feet away from outside entrances, windows, and ventilation. This would require residents to traverse a distance of at least 15 feet in order to smoke, placing them in a potentially dangerous environment if they are frail or need extensive supervision. This would also require many facilities to construct an outside area to protect residents from inclement weather.

Costs could be incurred by small businesses for necessary signage and notification to staff.

In 2009, data from before and after Columbia, Missouri passed its comprehensive smoke-free law in 2007 show an increase in sales taxes in restaurants and bars while retail sales remained stable. The analysis in several other states implementing similar legislation found that the smoke-free law did not have a significant impact on overall employment, business closures or openings, or payroll withholding taxes in the restaurant or bar industries.

Estimated costs to employers for secondhand smoke effects on non-smoking employees can add up to \$490 per smoker annually. The U.S. Environmental Protection Agency (EPA) estimates that smoke-free restaurants can expect to save approximately \$190 per 1,000 square feet each year in lower cleaning and maintenance costs.

FISCAL DESCRIPTION

Sections 191.1200 - 191.1230:

The proposed legislation repeals the current Indoor Clean Air Act and enacts new provisions regarding smoking in public places.

FISCAL DESCRIPTION (continued)

This legislation provides that smoking in all enclosed public places shall be prohibited. The legislation lists examples of public places and includes restaurants, bars, health care facilities, shopping malls, retail stores, sports arenas, theaters and museums. A public place does not include a private residence unless it is used as a child care, adult day care, or health care facility. Smoking in all enclosed facilities within places of employment such as meeting rooms, employee lounges, private offices, elevators, hallways and cafeterias shall be prohibited. This legislation also prohibits smoking in outdoor places, including within 15 feet of entrances, windows, bleachers and grandstands of outdoor arenas, public transportation stations and playgrounds. Private residences, tobacco retail stores, at least 20 percent of hotel and motel rooms and certain outdoor areas of places of employment are exempt from the smoking prohibitions.

The Department of Health and Senior Services shall enforce the provisions of this legislation. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because such person exercises any rights afforded under or reports any violations of this legislation. An employee or private citizen may bring legal action to enforce provisions of this legislation.

Any person smoking in prohibited areas shall be guilty of an infraction and any person who controls a public place or place of employment who fails to comply with the legislation shall be subject to a fine not to exceed 50 dollars for the first violation and up to a 500 dollar fine for a third or subsequent violation within one year. In addition, such person may have any license issued to such person suspended or revoked.

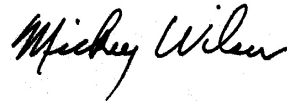
This legislation allows political subdivisions or local school boards to enact more stringent ordinances or rules.

This legislation becomes effective January 2, 2011.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Office of the State Courts Administrator
Department of Natural Resources
Department of Health and Senior Services
Department of Public Safety-Division of Fire Safety
Francis Howell School District
Special School District
Parkway School District
Department of Elementary and Secondary Education

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 22, 2010